



**EX PARTE OR LATE FILED**

Director-  
Federal Regulatory

SBC Communications Inc.  
1401 I Street, N.W.  
Suite 1100  
Washington, D.C. 20005  
Phone 202 326-8890

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JUL 24 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ex parte

Re: CC Docket No: 96-98/  
CPD Docket No: 97-24

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop Code 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Yesterday, July 23, 1997, Jim Jones, Paul Dorin and the undersigned representing SBC met with Ed Krachmer and Tom Power of the Competitive Pricing Division of the Common Carrier Bureau to discuss issues in the above referenced dockets. The attached outline summarizes the discussion.

The current dispute between paging carriers and local exchange carriers regarding payment for facilities utilized to connect local exchange carriers with paging carriers can be summarized into two questions. First; do the rules contained in the First Report and Order in CC Docket No. 96-98 ( specifically 51.703 and 51.709 ) relieve pagers from their obligation, under lawfully approved state tariffs, to pay for facilities used for interconnection prior to the approval by State Commissions of interconnection agreements under Sections 251 and 252 of the Telecommunications Act of 1996? Second; are the reciprocal compensation provisions of rule 51.703 appropriately applied to paging carriers in view of the one way nature of paging traffic?

SBC, as well as many other commenting parties, strongly advocate a re-examination of the Commission decision that paging carriers are "telecommunications carriers" and therefore entitled to reciprocal compensation under rule 51.703. The one way nature of paging traffic cannot be made to fit the reciprocal compensation paradigm contained in The First Report and Order in Docket No. 96-98. SBC recognizes that within the context of CPD 97-24 the Bureau cannot make this determination but nonetheless urges the Bureau to initiate such a re-examination.

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Ex parte  
July 24, 1997  
Page Two

Within the context of CPD 97-24, the Bureau should affirm that paging carriers are obligated to honor previous agreements under lawfully approved state tariffs or interconnection agreements until such time as those tariffs or interconnection agreements are superseded by negotiated agreements approved by State Commissions under section 251 and 252 of the Telecommunication Act of 1996. Moreover, the Bureau should affirm that paging carriers are not relieved of their obligation to negotiate interconnection agreements with incumbent local exchange carriers and should instruct paging carriers to initiate such negotiations in order to resolve the current dispute.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dick Brown". The signature is written in a cursive, flowing style.

Attachment

cc: Ed Krachmer  
Tom Power

EX PARTE CONTACT OF  
SBC COMMUNICATIONS INC.

JULY 23, 1997

IN THE MATTER OF REQUESTS FOR  
CLARIFICATION OF THE COMMISSION'S  
RULES REGARDING INTERCONNECTION  
BETWEEN LECS AND PAGING CARRIERS

CCB/CPD 97-24

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JUL 24 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

## OVERVIEW

- PAGING CARRIERS MAY NOT USE THIS PROCEEDING AS A SUBSTITUTE FOR NEGOTIATIONS WITH LECS UNDER THE ACT.
- RECIPROCAL COMPENSATION CANNOT BE MADE TO FIT THE LEC-PAGING CARRIER RELATIONSHIP.
- PAGING CARRIERS ARE DIFFERENT THAN OTHER CMRS PROVIDERS BUT MUCH LIKE ENHANCED SERVICE PROVIDERS OR BUSINESS CUSTOMERS USING "DID" SERVICES, AND THUS SHOULD BE TREATED LIKE THEM.
- FACILITIES CHARGES ARE NOT PROHIBITED BY THE ACT OR ANY APPLICABLE REGULATION OF THE COMMISSION.

CARRIERS MAY NOT USE THIS PROCEEDING AS  
A SUBSTITUTE FOR NEGOTIATIONS UNDER THE ACT

- SWBT HAS UNCOLLECTIBLES OF \$1 MILLION DUE TO PAGING CARRIERS THAT HAVE WITHHELD PAYMENTS FOR USE OF SWBT-PROVIDED FACILITIES. THAT AMOUNT GROWS BY AN ADDITIONAL \$125,000 PER MONTH FROM PAGING CARRIERS REFUSING TO PAY THEIR BILLS.
- NONE OF THE CARRIERS WITHHOLDING PAYMENTS HAS ENTERED INTO INTERCONNECTION NEGOTIATIONS WITH SWBT.
- UNDER THE ACT, CARRIERS MAY (1) CONTINUE TO INTERCONNECT UNDER STATE TARIFFS OR PRE-ACT INTERCONNECTION AGREEMENTS, OR (2) NEGOTIATE NEW AGREEMENTS UNDER SECTIONS 251 AND 252.
  - PAGING CARRIERS HAVE DONE NEITHER. WITHOUT NEGOTIATION, THEY HAVE UNILATERALLY DECIDED A TERM OF INTERCONNECTION (FACILITIES CHARGES) AND SEEK TO HAVE THIS COMMISSION ENFORCE IT.
- THIS COMMISSION CANNOT GRANT SUCH EXTRAORDINARY RELIEF. PAGING CARRIERS MUST NEGOTIATE AND ARBITRATE ANY DISPUTES BEFORE APPLICABLE STATE COMMISSIONS AS PROVIDED BY SECTION 252 OR CONTINUE TO PURCHASE SERVICES UNDER EXISTING CONTRACTS OR LAWFULLY APPROVED TARIFFS.

RECIPROCAL COMPENSATION CANNOT BE MADE  
TO FIT THE LEC-PAGING CARRIER RELATIONSHIP

- PAGING CARRIERS ADMIT THAT LECS TRANSPORT ALL OF THE TRAFFIC BETWEEN THEIR RESPECTIVE NETWORKS. (See, e.g., COMMENTS OF PCIA, p. 6-7). THIS ALONE TAKES PAGING CARRIERS OUT OF THE DEFINITION OF RECIPROCAL COMPENSATION UNDER 47 U.S.C. §251(b)(5) AND 47 C.F.R. §51.701(e).
- FURTHER, LECS TERMINATE ALL OF THE TRAFFIC SENT BETWEEN THEIR OWN AND PAGING CARRIER NETWORKS. THE TYPICAL PAGING CARRIER LITERALLY CANNOT PERFORM THIS FUNCTION.
- A PAGING CALL IS LAST SWITCHED AT THE LEC'S END OFFICE SWITCH OR TANDEM SWITCH. WHEN IT IS SENT TO THE PAGING CARRIER'S TERMINAL, THE CALL IS ENDED. AS A SEPARATE TRANSMISSION, THE PAGING CARRIER MAKES A SECOND CALL BROADCASTING INFORMATION OVER RADIO WAVES TO ITS CUSTOMERS. TWO-WAY COMMUNICATIONS NEVER TAKES PLACE.

- ALTHOUGH THEY NOW ARGUE DIFFERENTLY, PAGING CARRIERS HAVE ALREADY ADMITTED THIS:
  - "MESSAGING SERVICES TODAY ARE GENERALLY ONE-WAY NON-INTERACTIVE COMMUNICATIONS AND ARE NEITHER INTENDED TO BE, NOR DO THEY SUPPLANT, BASIC TWO-WAY INTERACTIVE VOICE TELEPHONE SERVICES... EVEN THOSE NARROWBAND MESSAGING SERVICES BEING INTRODUCED PRESENTLY ARE NOT TWO-WAY INTERACTIVE COMMUNICATIONS. THESE SERVICES CONSIST OF TWO ONE-WAY COMMUNICATIONS AND, THUS, DO NOT REPLICATE OR REPLACE A SUBSCRIBER'S LOCAL BUSINESS OR RESIDENTIAL PHONE SERVICE." (REPLY COMMENTS OF PAGING NETWORKS, INC. ("PAGENET") FILED MAY 30, 1996 IN CC DOCKET NO. 96-98 AT 7-8)
  - "EVEN THE NEW SO-CALLED TWO-WAY MESSAGING SERVICES ARE NOT INTERACTIVE, BUT RATHER, TWO SEPARATE ONE-WAY COMMUNICATIONS." (PAGENET COMMENTS ON MAY 16, 1996, AT 14)
- THEREFORE, EVEN ACCORDING TO PAGING CARRIERS THEMSELVES, IT IS CONCLUSIVE THAT TYPICAL PAGING CARRIERS DO NOT TRANSPORT AND TERMINATE TRAFFIC AND THUS ARE NOT ENTITLED TO RECIPROCAL COMPENSATION.

PAGING CARRIERS ARE DIFFERENT THAN OTHER CMRS PROVIDERS BUT MUCH LIKE ENHANCED SERVICE PROVIDERS OR BUSINESS CUSTOMERS USING DID SERVICES, AND THUS SHOULD BE TREATED LIKE THEM

THE ESP ANALOGY:

- PAGING CARRIERS AND ESPs (e.g., VOICE MAIL PROVIDERS) DELIVER MESSAGES ONLY TO THEIR CUSTOMERS (VOICE MAIL CUSTOMERS RETRIEVE THEIR MESSAGES; PAGING CUSTOMERS RECEIVE THEM). THERE IS NO DIFFERENCE IN THEIR "INTERCONNECTION" WITH THE PUBLIC SWITCHED NETWORK: THEY BOTH SIMPLY RECEIVE INFORMATION AT THEIR EQUIPMENT AND NEVER ESTABLISH TWO-WAY INTERCONNECTION.
- ESPs (LIKE VOICE MAIL PROVIDERS) PAY FACILITIES CHARGES UNDER STATE TARIFF.



THE "D.I.D." BUSINESS CUSTOMER ANALOGY:

- UNLIKE CELLULAR CARRIERS THAT EXCHANGE TRAFFIC, PAGING CARRIERS OBTAIN SERVICE ARRANGEMENTS FROM LECS THAT ARE ESSENTIALLY THE SAME AS SERVICES OBTAINED BY BUSINESS CUSTOMERS (e.g., DID BUSINESS SERVICES) .
- A PAGING CARRIER ORDERS LOCAL LOOPS BETWEEN LEC CENTRAL OFFICES AND ITS PREMISES AND USES THEM LIKE ANY OTHER BUSINESS CUSTOMER TO RECEIVE LOCAL CALLS DIALED TO NUMBERS (CORRESPONDING TO INDIVIDUAL PAGERS) .
- BECAUSE THE TECHNICAL CHARACTERISTICS OF THE SERVICES RECEIVED AND FACILITIES USED BY PAGING CARRIERS ARE FUNCTIONALLY IDENTICAL TO OTHER BUSINESS CUSTOMERS USING DID SERVICES, THE CHARGES SHOULD BE THE SAME. IT IS THE PAGING CARRIER THAT RECEIVES THE BENEFIT OF THE LOOP FACILITIES THAT EXTEND BETWEEN THE CENTRAL OFFICE AND ITS PREMISES AND, AS WITH BUSINESS CUSTOMERS, THE PAGING CARRIER SHOULD BE RESPONSIBLE FOR CHARGES FOR THOSE FACILITIES .

FACILITIES CHARGES ARE NOT PROHIBITED BY THE  
ACT OR ANY APPLICABLE REGULATION OF THE COMMISSION

- RULE 51.703 (b) APPLIES TO CHARGES FOR "TRAFFIC". NOWHERE DOES THE RULE REFER TO CHARGES FOR FACILITIES USED TO TRANSPORT AND TERMINATE THAT TRAFFIC. IN THE INDUSTRY, "TRAFFIC CHARGES" HAS ALWAYS DENOTED CHARGES BASED ON MINUTES OF USE. FACILITIES CHARGES, ON THE OTHER HAND, RARELY IF EVER APPLY ON A MINUTE-OF-USE BASIS.
- EVEN ASSUMING THAT THE TERM "TRAFFIC" FOR SOME REASON ALSO MEANS "FACILITIES", THE RULE ONLY APPLIES UNDER A RECIPROCAL COMPENSATION ARRANGEMENT FOR THE TRANSPORT AND TERMINATION OF LOCAL TRAFFIC WHICH, AS EXPLAINED ABOVE, IS NOT THE CASE HERE.
- UNDER TARIFFS OR PRE-ACT CONTRACTS, PAGING CARRIERS HAVE ORDERED AND RECEIVED (AND ARE USING) LOCAL SERVICE ARRANGEMENTS FROM LECS. PAGING CARRIERS CAN CANCEL THOSE ARRANGEMENTS OR RENEGOTIATE THEM UNDER THE ACT.
- COSTS FOR THE PROVISION OF FACILITIES TO PAGING CARRIERS ARE NOT RECOVERED IN LOCAL EXCHANGE SERVICE RATES APPLIED TO THE GENERAL BODY OF RATEPAYERS. SOME PARTY WILL ULTIMATELY BEAR THE COST OF THESE FACILITIES AND IT IS ONLY REASONABLE THAT THOSE WHO CAUSE THE COST SHOULD BEAR THE COST.

- WHILE PAGING CARRIERS HAVE MANY OPTIONS AVAILABLE TO THEM, THEY CANNOT:
  - IGNORE THEIR PRESENT OBLIGATIONS FOR ARRANGEMENTS UNDER TARIFF/CONTRACT, and
  - IGNORE THE ACT FOR RENEGOTIATION OF THOSE ARRANGEMENTS, and
  - SIMPLY TAKE SUCH ARRANGEMENTS FOR FREE.
  
- ➔ THIS IS, HOWEVER, EXACTLY WHAT PAGING CARRIERS ARE ASKING THIS COMMISSION TO LET THEM DO. OBVIOUSLY, THIS CONTENTION DEFIES THE ACT, THE COMMISSION'S RULES, AND BASIC REASON.

## ACTION SOUGHT

- THE COMMISSION SHOULD:
  - ORDER PAGING CARRIERS TO PAY FACILITIES CHARGES TO DATE AND GOING FORWARD.
  - ORDER THAT PAGING CARRIERS SEEKING NEW ARRANGEMENTS WITH LECS MUST NEGOTIATE WITH THEM AS EXPLICITLY PROVIDED FOR IN SECTION 252, OR CONTINUE TO HONOR PRE-EXISTING AGREEMENTS OR LAWFULLY APPROVED STATE TARIFFS.
- IF THE COMMISSION CHOOSES, IT MAY ALSO:
  - CLARIFY THAT RECIPROCAL COMPENSATION DOES NOT APPLY TO LEC-PAGING INTERCONNECTION, OR INITIATE AN NPRM TO CLARIFY THIS ISSUE.